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LBJ State Office
Building

John Sharp

Comptroller of Public Accounts
Austin, Texas 78774

IO # 1612C
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May 18, 1992

Opinion Committee

The Honorable Dan Morales
Attorney General of Texas
Supreme Court Building
Austin, Texas 78701

Dear General Morales:

This letter is to request your official opinion concerning the applicability of the "truth in taxation" provisions of the Tax Code to county education districts (CEDs). These provisions impose limits on increases in the tax rate adopted by taxing units, require notice and hearing in some circumstances, and authorize rollback elections. These provisions are required by Article VIII, Section 21 of the Texas Constitution and are found in Sections 26.012, 26.04, 26.05, 26.051, 26.06, 26.07, 26.08 and 26.081, Tax Code.

Through Senate Bill 351 as amended by House Bill 2885, the Seventy-Second Legislature created CEDs, mandated that each CED adopt a tax at a rate necessary "to collect its local fund assignment," (Section 20.945, Education Code) and prescribed the formula by which that computation is made (Section 16.252, Education Code). In effect, the legislation established the tax rates for CEDs.

This system of financing the public schools of Texas has been declared unconstitutional by the Texas Supreme Court in *Carrollton-Farmers Branch Independent School District, et al v Edgewood Independent School District, et al*, Tex. Sup. Ct. Slip Opinion, issued January 30, 1992. However, both that court and Federal District Judge James Nowlin have declined to prevent collection of taxes by CEDs for 1991 and 1992. *Carrollton-Farmers Branch*, supra, and *Smith, et al, v Travis County Education District, et al*, Civil No., A-92-CA-075, United States District Court for the Western District of Texas, slip opinion, issued May 1, 1992.

Thus the applicability of the truth in taxation provisions for 1991 and 1992 taxes is a relevant issue. At the same time, the judicial history of CEDs has a direct bearing on the issues being raised, since one of the flaws of the CED system is the fact that the state, rather than local officials, has in effect mandated this tax and its rate.

The "truth in taxation" provisions have been in place for a number of years. The legislation creating CEDs did not address the applicability of these provisions to CEDs. Since the tax rate contemplated by the legislation noted above is sufficient to subject all CEDs to the possibility of an election to roll back the tax rate, the question has been raised whether the truth in taxation provisions are applicable to them.

Both CEDs and school districts are included in the list of "taxing units" in Section 1.04, Tax Code. "Taxing unit" is the operative term used in the "truth in taxation" provisions. Some special truth in taxation provisions, however, apply only to school districts.

The purpose of the truth in taxation provisions is to provide meaningful notice to local taxpayers about the tax rate proposed for adoption by the governing bodies of the various taxing units and to provide a direct means by which the taxpayers can override those rates. In this case, it has been suggested to me that the rates are not within the control of the local governing bodies, since the formula is specified by state statute.

Thus, my first question is this: Is a CED required to calculate effective and rollback tax rates, publish notices, and hold hearings before adopting its tax rate as required by the Education Code?

If you conclude that a CED is subject to any of the "truth in taxation" requirements, additional questions arise:

Under Section 20.942, Education Code, a CED is considered a school district. The limitation on rate increases and the consequences of a rollback election are different for school districts than for other "taxing units." Compare Sections 26.07 and 26.08, Tax Code.

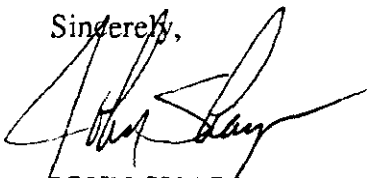
My second question is this: To the extent CEDs are subject to truth in taxation provisions, are they governed by those pertaining to school districts, or those pertaining to other taxing units?

My third question is this: If a CED's proposed tax rate is reduced by a rollback election under the truth in taxation provisions, to what point does the CED roll back its rate as calculated under the mandate of the Education Code?

Since it now appears that a special session of the legislature is unlikely to be called this summer, there seems to be no opportunity for the legislature to address these issues before the next tax cycle begins. The truth in taxation process formally begins August 7. Your opinion will be most helpful if it is issued during June, giving us time to notify the districts of the procedures they must follow, and allowing them time to react accordingly.

If you have any additional questions, or if we can help in any way, please contact my General Counsel, Mr. Cril Payne, at 463-4904.

Sincerely,



JOHN SHARP
Comptroller of Public Accounts